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Supreme Court, U.S.
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OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

NO.

R.D. WRIGHT, a/k/a DON WRIGHT, a/k/a R. DON WRIGHT, PETITIONER

VERSUS

JOHN DEERE INDUSTRIAL EQUIPMENT CO., RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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24 pp

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

NO.

R.D. WRIGHT, a/k/a DON WRIGHT, a/k/a R. DON WRIGHT,

PETITIONER

VERSUS

JOHN DEERE INDUSTRIAL EQUIPMENT CO.,

RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

THE Petitioner, R. DON WRIGHT ("WRIGHT"), respectfully prays that a writ of certiorari issue to review the judgement and opinion of the UNITED STATES COURT OF APPEALS for the FIFTH CIRCUIT entered in this proceeding on SEPTEMBER 3,1993.

QUESTIONS PRESENTED FOR REVIEW

1.Can a resident of Texas be sanctioned out of his Homestead rights as afforded by the Texas Constitution concerning Homesteads.

2. Can a constructive trust an equitable lien be attached to Homestead in Texas if it does not conform to the conditions as set out in the Texas Constitution concerning Homesteads.

3. Are all residents of Texas afforded the same Homestead rights.

4. Can the Fifth Circuit ignore the Texas State Constitution Article 16 § 50 as to rights it provides to residents of Texas and apply only to whom the Fifth Circuit so desires.

5.Can the Homestead of R. Don Wright which was purchased in 1976, and has been lived in continuous to the present time,and no other residence has ever been owned in Texas by R. Don Wright change from a Homestead in 1976,1977,1978, 1979,1980, 1981,1982,January through July of 1983 and then suddenly stop for a 5 month period and then return to Homestead status as referred to in the Fifth Circuits' opinion in response to the Petitioner's motion for rehearing.

6.When the plaintiff never plead the "Non Homestead Issue in any pleadings", can the Fifth Circuit "insert" a new issue of the defendant not being able to prove his Homestead exists because of sanctions striking the defendant's pleadings,even though the plaintiff refers to Debtor's Homestead several times in their pleadings which constitutes a Judicial admission.

7.Does the Fifth Circuit "law of the case" doctrine render the Texas Constitution invalid even when it is apparent the Fifth Circuit "law of the case" doctrine directly negates rights afforded R. Don Wright as a resident of Texas and Texas Constitution concerning liens or constructive trusts on Homesteads.

8.Can the Fifth Circuit so far depart from the accepted and usual course of judicial proceedings, of its prior decisions to not afford R. Don Wright the same rights as other Texas residents concerning Homesteads.

9. Can the Fifth Circuit decide a question that conflicts with a decision of the Supreme Court of the United States concerning liens and trusts being attached to Texas Homesteads.

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OPINIONS BELOW

The opinion of the Court of Appeals is attached hereto as Appendix A. The opinion of the United States District Court is attached hereto as Appendix B. The opinion of the Bankruptcy Court is attached hereto as Appendix C.

Jurisdictional Statement

The judgement of the Court of Appeals for the Fifth Circuit was entered on September 3, 1993. The jurisdiction of this court is invoked pursant to 28 U.S.C. 1254(1).

CONSTITUTION PROVISIONS AND STATUTES INVOLVED

This case involves the interpretation of the Texas State Constitution Article 16 § 50 which states in part, "No mortgage, trust deed, or other lien on the homestead shall ever be valid, except for the purchase money thereof, or improvementds made there on, as herein before provided".This case also involves the denial of the Homestead right as afforded by the Texas State Constitution to all residences of the State of Texas to possess a homestead as outlined Article 16 § 50.

STATEMENT OF THE CASE

This case was appealed to the Fifth Circuit pursuant to 28 U.S.C. §1334. Wright filed chapter 11 bankruptcy in 1987, this was converted to a chapter 7 in 1988. Wright's wife did not file bankruptcy.

Wright and his wife bought their homestead in 1976 and have lived in from that time to the present. IN 1982 Wright and his wife remodeled their homestead with all work finished all work in May of 1983. All work was paid for on a ongoing basis and no work on the homestead has been done since May of 1983 and no funds were paid to anyone since this time. The homestead has carried a homestead tax exemption prior to any association with John Deere.

Wright started a business relationship with John Deere through a related company. This relationship started on or about the 1st day of August 1983, and ended in December 1983. As a result of the short business venture a loss of approximately $400,000 existed. John Deere sued

Wright in U.S. District court in Dallas and an agreed judgement resulted for the approximately $400,000 against Wright only. No accusations of any misappropriations of any funds were made in the District Court.John Deere filed an adversary complaint on the sixty first day after the §341 meeting of creditors, which was allowed by the Bankruptcy Court. Among other things John Deere alleged that Wright diverted funds to "inhance" his homestead and prayed for a constructive trust and equitable lien to be impressed on his homestead in the amount it was enhanced. Wright denied any funds of any amount were diverted from Deere and no funds were used to enhance his homestead. No proof of any type was ever presented to confirm Deere's complaint.

Wright was sanctioned by the Bankruptcy Court for disobeying orders and his answer to the complaint was stricken and a default judgement was awardwed John Deere. The Bankruptcy Court then let John Deere change their pleadings to have a default against Wright not for any amount

of enhancement, but for the amount of the prior District Court agreed judgement. The bankruptcy court also awarded sanctions against Wright to another creditor, and the trustee. The trustee's award was for the denial of Wright's discharge and $1,000 in attorneys fees. Wright appealed the trustee's award to the District Court and the Fifth Circuit. The Fifth Circuit affirmed the sanctions as to the truste, which had nothing to do with the homestead issue.

Wright appealed the Bankruptcy Court's award to John Deere and pointed out that a constructive trust and equitable lien could not be impressed on a Texas homestead unless it conforms to the Texas Constitution concerning such. The District Court affirmed the Bankruptcy Court and the Fifth Circuit affirmed the District Court.

REASONS FOR GRANTING THE WRIT

The opinion of the Fifth Circuit creates a conflict between Texas Constitution Article 16§50 regarding liens and trusts on Texas homesteads.

IN re United States v Rodgers, 461 US 677,76 L Ed 2d 236, 103 S Ct 2132,Justice Brennan [461 US 684] B recited "Thus under Tex Const, Art 16 § 50:" "The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for [certain exceptions not relevant here]...No mortgage, trust deed, or other lien on the homestead shall ever be valid, except for [certain exceptions not relevant here]"7. Homestead § 4- termination - divorce 6a, 6b. The homestead character of property, in which each spouse in a marriage has a separate and individual possessory interest that is only lost by death or abandonment and may not be compromised by the other spouse or by his or her heirs, is not destroyed in Texas even by divorce if one of the parties to the divorce continues to maintain the property as a proper homestead, although the courts may partition the property, award it to one of the spouses ,or require one spouse to compensate the other as part of the

disposition of marital property attendant to the divorce proceedings. This case never involved the issue of more than one location being claimed or disputed as a homestead. Wright and his spouse has lived in homestead since 1976 and continue to do so today. The cases cited in th opinion of the Fifth Circuit or completely off point as they deal with more than one location. The cite of the Fifth Circuit in reference to the burden of establishing the homestead character on the one claiming the homestead exemption, First Interstate Bank v. Bland, 810 S.W. 2d 277, 286 (Tex. App.--Fort Worth 1991, no writ); 9.HOMESTEAD 29, states Possession and use of land by one who owns it and resides upon it makes it homestead in law and fact. Vernons Ann. Texas Const. Art 16 § 50. At no time in this case has John Deere ever raised the question of there being another residence which might question or insinuate Wright was trying to claim two homesteads, or that he did not live in the homestead since 1976, or own the property.

In Hoffman v Love 494 S W. 2d 591 Court of Civil Appeals of Texas, Dallas 1973 , States Failure of vendors of property to claim homestead exemption in their answer in action against them by judgement creditors was not an abandonment of the property as a homestead as a matter of law, so that purchaser of property has standing to assert that no judgement lien had attached. In Matter of Moody, 862 F2d 1194 (5th Cir. 1989) one of the panel members of this appeal in Moody, held that Under Texas law, no equitable lien or constructive trust can be imposed on homestead property which is merely augmented or improved with wrongfully acquired funds,and not purchased with such funds. Wright denies using any of John Deere's funds to enhance his homestead. Even if he had, no lien could attach to his homestead.

Under Texas law, once homestead is established, it is presumed to continue until it is abandoned, and a party asserting abandonment has burden of proof. Firstbank v. Pope, E.D. Tex 1992, 141 B.R. 115, affirmed 979 F. 2d 1534.

CONCLUSION

The opinions of the Fifth Circuit in this case conflict with Article 16 § 50 of the Texas Constitution. The opinions of the Fifth Circuit also conflict with ruling of the Supreme Court of the United States. The opinions conflict with settled law of Texas and case law concerning homesteads.This case conflicts with recent published opinions of panel members of this case. The law of the case issue should be extinguised and the loss of homestead rights by sanctions, instead of by the laws of the Texas Constitution is a concrete example of a personality being the factor in an opinion instead of law governing the issue.

Respectfully Submitted

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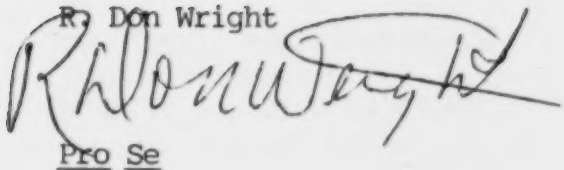

Pro Se

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-1144

No. 93-1146

Summary Calender

IN THE MATTER OF R. DON WRIGHT and MICKI WRIGHT,

DEBTORS, R.DON WRIGHT

Appellant,

VERSUS

JOHN DEERE INDUSTRIAL EQUIPMENT CO.,

Appellee.

Appeal from the United States District

Court for the Northern District of Texas

(1:91-CV-058-C; 1:91-CV-059-C)

Before: Jolly, Weiner, and Emilio M. Garza,

Circuit Judges.PER CURIAM*:

R. DON WRIGHT, Debtor-Apellant, appeals the

district court's affirmance of the bankruptcy court's imposition of a constructive trust and equitable lien on Wright's domicile in favor of John DeereIndustrial Equipment Co., Creditor -Appellee ("John Deere").The constructive trust and equitable lien were imposed as part of the bankruptcy court's entry of default judgement against Wright for his repeated refusals to follow the bankruptcy court's lawful orders that he allow John Deere and other creditors to inspect personal property located within his domicile. Concluding that under the law of the case doctrine we are bound by an earlier decision of this court upholding the default judgement, we affirm the orders of the district court.

---

*Local Rule 47.5 provides:"The publication of opinions that have no precedential value and merely decide particular cases on the basis of well settled principles of law imposes needless expense on the public and burdens on the legal profession"Pursuant to that Rule, the Court has determined that this opinion should not be published.

I

Both of Wright's instant appeals, No. 93-1144 and No. 93-1146, arise out of the district court orders 1 affirming the bankruptcy court's imposition of sanctions that in turn produced the entry of default judgement in favor of creditors John Deere and NCNB Texas National Bank. They and the trustee, Stanley Wright, had moved for sanctions because of Wright's repeated refusal to obey the Bankruptcy Court's inspection orders.

---

1 Appeal no. 1144 arises from the Order dated January 25,1993 in adversarial case no. CA-1-91-058-C;Appeal no. 1146 arises from the Order dated January 22, 1991in adversarial case no. CA-1-91-059-C. Neither the Appellant nor the Appellees have distinguished between the two adversarial cases and orders on appeal. In addition, the only thing that the Appellant challenges is the imposition of the equitable lien and constructive trust in favor of John Deere,the imposition of which was contained in both orders of the district Court.

Thus, for the purposes of these appeals, we have consolidated the analysis of the two orders and the constructive trust issue within this one issue.

After conducting a full evidentiary hearing the bankruptcy court entered orders in favor of the trustee and the creditors.

In an earlier appeal Wright challenged the order imposing sanctions in favor of the trustee. In Wright I,[2] we reviewed those sanctions and concluded that none were erroneous, including those striking Wright's answer and imposing a default judgement in favor of the creditors. As we stated in Wright I:

> Wright invoked the aid of the court in seeking the a benefit he desired--a discharge in bankruptcy. As long as the court did his bidding he was inclined to obey. When orders adverse to Wright's position were in issue he chose to ignore them without seeking interlocutory appeal or mandamus relief. Wright's conduct constituted open and notorious contempt of the

bankruptcy court. We cannot and will not countenance such. [3]

In this appeal Wright challenges the district court's orders affirming the bankruptcy court's sanctions in favor of John Deere. Specifically, Wright challenges the sanction that imposed an equitable lien and constrictive trust as part of the default judgement in favor of John Deere.

---

2 In re R.Don Wright, No. 92-1604 (5th Cir., Dec.22,1992) [Wright I].

3 Wright I, at 6.

II

Wright asserts several grounds to challenge the district court's affirming the equitable lien and constructive trust in favor of John Deere. We do not address the merits of Wright's challenges, however, because we are bound by the earlier decision of this court in Wright I. 4

In Wright I, while deciding the trustee's appeal , we addressed whether the bankruptcy court abused its discretion in striking Wright's answer and entering default judgement in favor of the creditors, John Deere and NCNB. After a review of the record we concluded that Wright's open and notorious defiance of the bankruptcy court amply justified the imposition of those sanctions.5 The following colloquy with the bankruptcy court reveals the extent of Wright's contempt.Q: so Mr. Wright if the court issues a forth order or a fifth order compelling you to allow the creditors entry to your residence, to inspect and appraise the entire contents, you will continue to refuse to obey those orders? A: I will refuse to let you in the house;

yes sir.

The sanction striking Wright's answer and entering default judgement in favor of John Deere establishes the validity of John Deere's equitable lien and constructive trust.

E.g., Ingalls Shipbuilding, Inc. v. Director, Office of the Workers'Compensation Programs, 976 F. 2d 934,937 (5th Cir. 1992) stating that one panel is bound by the decision of the prior panel absent intervening legislation or a superseding decision by the Supreme Court or this Court en banc). 5 Wright I, at 1, 6

As a result of Wright's answer being stricken, the allegations contained in John Deere's original and amended complaint are taken as true-- including the allegation that Wright fraudlently diverted proceeds from John Deere for the improvement of his property. By entering the default judgement the bankruptcy court granted

John Deere's prayer for relief--which included the request that Wright's property be impressed with an equitable lien and constructive trust for $403,933.34

Consideration here of Wright's sole colorable basis for challenging the equitable lien and constructive trust--that they cannot be placed on non-fraudulently acquired homestead property as a matter of law--is also pretermitted by the sanctions upheld by a previous panel of this court in Wright I.Wright's challenge is predicated on classifying his property as a homestead as of the time he misappropriated the funds.

---

6 E.g NCNB Texas National Bank v. Carpenter,849, S.W. 2d 875, 879(Tex App.--Fort Worth 1993, no writ; First Interstate Bank v. Bland,810 S.W. 2d 277,286 (Tex.App--Forth Worth 1991, no writ);Pace v. McEwen,617 S.W.2d 816,818 (Tex. Civ App.--Houston [14th Dist.]1981, no writ).

Texas law, however, places the burden of establishing the homestead exemption.6 Because Wright subjected himself to sanctions on this issue that prevented him from offering proof on this issue he cannot claim that his property was a homestead during the relevant period without requiring us to revisit whether those sanctions were properly imposed. Again, that inquiry is precluded by the law of the case.7

III

Conclusion

Wright's open defiance of the bankruptcy court led to extensive but justifiable sanctions having far reaching consequences. One of those consequences was the imposition of an equitable lien and constructive trust on his domicile. Because we conclude that our previous decision bars us from reexaamination of the validity of the sanctions on which the districts's orders are based, the orders of the district court are AFFIRMED.8

---

7. See e.g. ,E.E.O.C.v Intern. Longshoremen's Ass'n,623F.2d 1054,1058 (5th Cir.1980) (stating that the law of the case" rule precludes review of findings of fact and conclusions of law made by an appellate court in a prior appeal of the case at issue).

8 In Affirming the district court, and thus the bankruptcy court, we caution Wright that,like his defiance of those courts, any frivolous or contemptuous actions in this court relative to the subject matter of this and previous decisions could subject him to the full panoply of sanctions at our disposal.

APPENDIX Aa

UNITED STATES COURT OF APPEALS

For the Fifth Circuit

No. 93-1144

No. 93-1146

IN THE MATTER OF:R.DON WRIGHT and MICKI WRIGHT,

DEBTORS.

R. DON WRIGHT

APPELLANT

VERSUS

JOHN DEERE INDUSTRIAL EQUIPMENT CO.,

APPELLEE.

Appeals from the United States District Court

for the Northern District of Texas

(1;91-CV-058-C; 1:91-CV-059-C)

ON PETITION FOR REHEARING

(October 13, 1993)

before JOLLY, WEINER, and EMILIO M. GARZA, Circuit Judges PER CURIAM:

IT IS ORDERED that the petitions for rehearing filed in the above titled and numbered causes on behalf of Appellant, Wright, be and the same are hereby

DENIED.

In its petition for rehearing, Wright argues for the first time that the Appellee, John Deere Industrial Equipment Co., judicially admitted that Wright's property was a homestead

during the period in which the funds at issue were diverted to that property. Deere counters that it merely used the term "homestead" in the present tense, namely to describe the current status of the property.

We decline to consider these issues, as we adhere to the well-settled practice that a court of appeals will not consider claims raised for the first time in a petition for rehearing. 1

ENTERED FOR THE COURT

S/ WEiner

UNITED STATES CIRCUIT JUDGE

CLERKS NOTE:

SEE FRAP AND LOCAL RULE 41 FOR STAY OF THE MANDATE.

---

1 E.g. Browing v. Navarro, 894 F.2d 99, 100 (5th Cir. 1990); Dean v. Dean, 837 F. 2d 1267,1268 (5th Cir. 1988); Wells v. Rushing, 760 F. 2d 660, 661 (5th Cir. 1985).

APPENDIX B

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

ABILENE DIVISION

FILED 1-22-1993

In re

R.D. WRIGHT, a/k/a DON WRIGHT, R.DON WRIGHT

Case No. 188-10048-7

Debtor

R.D. WRIGHT, a/k/a DON WRIGHT a/k/a R. Don Wright

Appellant,

v.

JOHN DEERE INDUSTRIAL EQUIPMENT COMPANY, NCNB TEXAS NATIONAL BANK, and STANLEY WRIGHT, Trustee,

CA-1-91-059-C

APPEAL FROM THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS JOHN C. AKARD, BANKRUPTCY JUDGE, PRESIDING

ORDER

This Case is before the court for the consideration of another appeal of the debtor, R.D. Wright, from the orders of the bankruptcy court imposing various sanctions upon him, including the denial of his discharge, the award of monetary sanctions in favor of certain creditors, and the imposition of a nondischargeable, equitable lien and constructive trust on his homestead in favor of John Deere.

Appellant contends that the orders of the court were unlawful, violated certain of his constitutional rights, and are not supported by evidence in the record.The orders of the bankruptcy court have been affirmed by this court an d by the United States Court of Appeals for the Fifth Circuit. Wright v. Wright(In the matter of R.Don Wright),No. 92-1604, (5th Cir.,Dec.22,1992).The additional argument presented by R.Don Wright in this appeal, that the record does not support the imposition on his homestead, has no merit.

It is, accordingly, ordered that the decision of the bankruptcy court, is in all

things , AFFIRMED.

The clerk shall furnish a copy of this order to each attorney of record.

Dated this 22nd day of January 1993.

S/ Sam R.Cummings

SAM R. CUMMINGS

UNITED STATES DISTRICT JUDGE

APPENDIX C

IN THE UNITED STATES BANKRUPTCY

COURT NORTHERN DISTRICT OF TEXAS

ABILENE DIVISION

IN RE: CASE NO. 188-10048-7

R.D. WRIGHT DEBTOR, ENTERED SEP 27 1990

JOHN DEERE INDUSTRIAL BANKRUPTCY COURT

PLAINTIFF, LUBBOCK, TEXAS

V. ADVERSARY NO.188-1035

R.D. WRIGHT and

MICKI WRIGHT,

DEFENDANTS.

FINAL JUDGEMENTS

By Order on Motion for Sanctions of even date herewith, the Court defendants answers to plaintiff's complaint in this adversary proceedings and entered default against defendants in this adversary proceedings. The Court further ordered that plaintiff John deere Industrial Equipment Company have and recover of and from debtor the sum of $5,217.00 as sanctions.

Therefore it is

ORDERED, ADJUDGED AND DECREED ATHAT DEBTOR R.D. Wright's discharge under 11 U.S. C. § 727 (a) (2) (3) (4)

(5) and (6) is denied;and it is further is

ORDERED, ADJUDGED AND DECREED that defendant Micki Wright's hypothetical discharge under 11 U.S. C. § 727 and § 524 (a) (3) and (b) (2) is denied; and it is further is

ORDERED ADJUDGED AND DECREED that Debtor R.D. Wright's debt to John Deere Industrial Equipment Company evidenced by that certain agreed judgement in favor of John Deere Industrial Equipment Company in principal amount of $403,933.34, plus $32,500.00 in attorneys fees in Civil Action No. CA-84-1052-G in the United States District Court for the Northern District of Texas, Dallas Division, (the"Judgement") is not dischargeable under 11 U.S. C §523 (a) (2) (4) and (6);and it is

ORDERED, ADJUDGED AND DECREED that the following described real property and improvements thereon are impressed with a dischargeable equitable lien and constructive

trust in favor of John Dere Industrial Equipment Company in the amount of $403,933.34, to wit:

Lot Six (6), Blk."D", of section one (1) of Lytle Shores Addition, a Subdivision of Part of Sections 52 and 61 of Blind Asylum Lands in The City at Abilene, Taylor County, Texas,according to the
Plat Records of Taylor County, Texas.and is other wise known as 2101 Shoreline Drive, Abilene, Texas;and it further is

ORDERED, ADJUDGED AND DECREED that John Deere Industrial Equipment Company have and recover of and from R.D. Wright the sum of $5,217.00 as sanctions, which sum shall not be dischargeable.

All relief not specifically granted herein is denied.

Dated this 24 day of September, 1990.

S/ John C. Akard

UNITED STATES BANKRUPTCY JUDGE

Supreme Court, U.S.
FILED
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(2)

No. 93-1112

IN THE

Supreme Court Of The United States

OCTOBER TERM, 1993

R. DON WRIGHT,

Petitioner,

v.

JOHN DEERE INDUSTRIAL EQUIPMENT CO.,

Respondent.

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether under Texas law a federal-court default judgment can impose a constructive trust and equitable lien on real property for monies fraudulently diverted into the real property, when the real property is asserted to be a homestead under Texas law but not, as required by Texas law, established by evidence to have been a homestead at the time the monies were diverted.

LIST OF AFFILIATED CORPORATIONS

Pursuant to Rule 29.1, Respondent, John Deere Industrial Equipment Company provides the following list of affiliated corporations:

Deere & Company [parent of respondent]

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No. 93-1112

IN THE

Supreme Court Of The United States

OCTOBER TERM, 1993

R. DON WRIGHT,

Petitioner,

v.

JOHN DEERE INDUSTRIAL EQUIPMENT CO.,

Respondent.

BRIEF IN OPPOSITION

Respondent ("John Deere") respectfully prays that the petition for writ of certiorari be denied.

DECISIONS BELOW

The decision of the court of appeals that is sought to be reviewed is unreported, and is set forth at App. 1.[1] *See Wright v. John Deere Indus. (Matter of Wright)*, 4 F.3d 991 (5th Cir. 1993) (mem.). This decision is referred to herein as *Wright II*. The unreported decision of the court of appeals on motion for rehearing in *Wright II* is set forth at App. 2. The unreported decisions of the district court whose orders were affirmed in *Wright II* are set forth at App. 3-A and 3-B. The unreported decision of the bankruptcy court from which appeals were taken in *Wright II* and *Wright I, infra* is set forth at App. 4. The

[1] References are to the appendix following the text of this brief in opposition.

unreported decision of the district court that was the basis for the appeal in *Wright I* is set forth at App. 5. The unreported decision of the court of appeals in *Wright I* is set forth at App. 6. *See Wright v. Wright,* 981 F.2d 1256 (5th Cir. 1992) (mem.).[2]

JURISDICTION

The decision and judgment of the court of appeals in *Wright II* was filed September 3, 1993. (App. 1 at p. 1) The court of appeals order denying rehearing was filed October 13, 1993. (App. 2 at p. 1) Petitioner's petition for writ of certiorari was filed with the Court January 10, 1994. The jurisdiction of the Court to review decisions of the court of appeals by certiorari rests on 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

In 1983, while acting in a fiduciary capacity to John Deere, petitioner ("Wright") fraudulently diverted over $400,000 of John Deere's money for his own use and benefit. John Deere brought suit against Wright in the United States District Court for the Northern District of Texas and recovered judgment against Wright in 1985 for the principal sum of $403,933.34, plus interest and attorneys' fees. (R. 10048-7, vol. 101, p. 26)[3]

In aid of collection, the district court entered a turnover order, which Wright refused to obey. The district court then entered an order requiring Wright to show cause why he should not be held in civil contempt for refusing to obey the turnover order.

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[2] Petitioner's bankruptcy trustee was, confusingly, also named Wright. See App. 3-A at p. 1.

[3] Citations are to the record on appeal in the court of appeals.

(2 Tr. 124)[4] Wright refused to obey the show-cause order, and the district court entered an order finding Wright in contempt of court and ordering that an arrest warrant be issued to bring Wright before the court. *(Id.)* Four days later and before the arrest warrant could be served on Wright, he filed a voluntary petition in bankruptcy on August 24, 1987, invoking the jurisdiction of the court pursuant to 28 U.S.C. § 1334(a). (R. 10048-7, vol. 101, p. 1)

In his bankruptcy case, Wright attempted to shield certain properties from creditors by claiming the properties as exempt under Texas law. In particular, Wright attempted to shield certain real property by designating the property as his homestead in his supplemental bankruptcy schedules filed October 1, 1987. (R. 10048-7, vol. 101, p. 29) John Deere thereupon instituted an adversary proceeding against Wright contesting his discharge, challenging the exemptions claimed by Wright, and further alleging that while acting in the fiduciary capacity to John Deere Wright fraudulently diverted John Deere's money into the real property which Wright later claimed as his homestead. (R. 1035, vol. 103, p. 403) John Deere sought judgment impressing the alleged homestead with a nondischargeable equitable lien and constructive trust in favor of John Deere in the amount of $403,933.34. Another judgment creditor, NCNB National Bank, instituted a second adversary proceeding challenging Wright's exemptions and contesting Wright's discharge. (App. 6 at p. 2)

John Deere, NCNB, and the bankruptcy trustee attempted to obtain discovery from Wright concerning his claimed exemptions, including the alleged homestead. Wright engaged in repeated flagrant abuse of the discovery process and refused to obey numerous bankruptcy court orders compelling discovery. (2 Tr. 249-262) John Deere, NCNB and the trustee filed various

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[4] Transcripts of hearings in the bankruptcy court are included in the record on appeal but are not consecutively paginated with the rest of the record.

motions for sanctions against Wright. The bankruptcy court conducted a consolidated evidentiary hearing on the various sanctions motions. At the conclusion of the hearing, the court found that Wright had continually refused to engage in discovery, willfully refused to obey six different bankruptcy court orders, made numerous false statements to the bankruptcy court about the existence and location of relevant documents, engaged in intentional efforts to conceal relevant documents from the bankruptcy court, and filed frivolous state court lawsuits against his creditors and their attorneys to harass them and intimidate them. *See* App. 4, *passim*. As sanctions, the bankruptcy court denied Wright's discharge, struck Wright's pleadings, and entered default judgments against Wright in favor of John Deere, NCNB and the trustee in the various adversary proceedings and in the bankruptcy case. (*Id.* at p. 10-11)

Wright appealed the final orders and final judgments of the bankruptcy court to the United States District Court for the Northern District of Texas. The district court first affirmed the bankruptcy court in Wright's appeal against the trustee. (App. 5) Wright then appealed the district court's decision to the United States Court of Appeals for the Fifth Circuit, which affirmed. (*Wright I*, App. 6) The court of appeals characterized Wright's conduct as "open and notorious contempt of the bankruptcy court" and affirmed the imposition of sanctions resulting in the entry of default judgments in favor of his creditors. Wright did not seek review in this Court of the decision in *Wright I*.

After *Wright I*, the district court then affirmed the bankruptcy court in Wright's appeal against John Deere. (App. 3-A, 3-B) The district court's affirmance as to John Deere was issued in reliance upon and in conformity with the court of appeals' opinion in *Wright I*. The district court held (App. 3-A at p. 2, 3-B at p. 2):

> Appellant [Wright] contends that the orders of the court were unlawful, violated certain of his constitu-

> tional rights, and are not supported by evidence in the record. The orders of the bankruptcy court have been affirmed by this court and by the United States Court of Appeals for the Fifth Circuit. *Wright v. Wright (In the Matter of R. Don Wright)*, No. 92-1604, (5th Cir., Dec. 22, 1992). The additional argument presented by R. Don Wright in this appeal, that the record does not support the imposition of the equitable lien and constructive trust on his homestead, has no merit.

Wright then appealed to the court of appeals from the district court's order affirming as to John Deere, and the court of appeals again affirmed. (*Wright II*, App. 1) Of pertinence to the question presented to this Court, the court of appeals held:

> Consideration here of Wright's sole colorable basis for challenging the equitable lien and constructive trust — that they cannot be placed on nonfraudulently acquired homestead property as a matter of law — is also pretermitted by the sanctions upheld by a previous panel of this court in *Wright I*. Wright's challenge is predicated on classifying his property as a homestead as of the time he misappropriated the funds. Texas law, however, places the burden of establishing the homestead character of the property on the one claiming the homestead exemption. Because Wright subjected himself to sanctions that prevented him from offering proof on this issue, he cannot now claim that his property was a homestead during the relevant period without requiring us to revisit whether those sanctions were properly imposed. Again, that inquiry is precluded by the law of the case.

(App. 1 at p. 5)

The court of appeals denied rehearing with a brief opinion (App. 2) and Wright then petitioned for a writ of certiorari.

Wright was represented by various counsel in the original John Deere district court suit, during all proceedings in the bankruptcy court, and in his appeals of the bankruptcy court judgments to the district court. Wright also was represented by counsel in *Wright I*. Wright began acting *pro se* in his second appeal to the court of appeals and has continued to act *pro se* in his petition for writ of certiorari.

Wright does not challenge the denial of his discharge, striking of his pleadings, or entry of default judgments against him. Wright simply claims that as a matter of Texas law, John Deere's bankruptcy-court default judgment cannot impose a constructive trust and equitable lien on real property that he asserts is his homestead, but which was never shown to have been his homestead at the time of the fraudulent diversions as required by Texas law.

REASONS FOR DENYING THE WRIT

A. This Case Is Not an Appropriate One for Review by the Court

Certiorari will be granted "only when there are special and important reasons therefor." Sup. Ct. R. 10.1 The concept of "importance" relates to the importance of the issues to the general public rather than their importance to the particular parties involved. *Rice v. Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70, 79 (1955); *Layne & Bowler Corp. v. Western Well Works,* 261 U.S. 387, 393 (1923).

Wright has neither argued nor suggested any circumstances that invite the discretion of the Court to review the decision below, or that suggest that the case is important to anyone other than Wright. The case presents issues purely of state law that were addressed correctly, but disappointingly to Wright, by the courts below. No federal question is involved. The decision of the court of appeals presents no conflict with a decision of any other

circuit or of the Court. The standards governing the exercise of the Court's discretionary power of review are simply not met.

B. The Factual Bases Asserted by Wright in the Questions Presented by Him Are Non-existent in the Record

As recognized by the court of appeals:

> Wright's challenge is predicated on classifying his property as a homestead *as of the time he misappropriated the funds.* Texas law, however, places the burden of establishing the homestead character of the property on the one claiming the homestead exemption. Because Wright subjected himself to sanctions that prevented him from offering proof on this issue, he cannot now claim that his property was a homestead during the relevant period . . . .

App. 1 at p. 5 (emphasis added).

Wright's petition for certiorari makes numerous factual assertions, relevant to a determination of homestead, that are unsupported in the record. The petition for certiorari states that the property was purchased in 1976, remodeled in 1982 and 1983 without the use of John Deere's money, lived in continuously ever since as a residence, and has a homestead tax exemption. (Petition at pp. 2, 7, 11) All of these statements are unsupported by the record and are offered by Wright for the first time in his petition for certiorari. There was no evidence, no finding, and no determination that the property was Wright's homestead in 1983, at the time he fraudulently diverted John Deere's money.

The bankruptcy court rejected Wright's characterization of the property as his homestead even at the time of the sanctions hearing. The bankruptcy court found Wright's repeated refusals to permit discovery concerning the properties he claimed as exempt to be more revealing of the truth than Wright's testimony. The bankruptcy court stated: "The court concludes that

Mr. Wright's actions clearly demonstrate a lack of merit in his asserted defenses." (App. 4 at p. 10) On appeal, Wright never challenged any of the bankruptcy court's findings of fact. The legal questions raised by Wright in his petition are not susceptible of consideration by the Court because the facts underlying them are either not of record or were found contrary to Wright's position.

C. The Decision Below Was Correct As a Matter of Texas Law

Even had the record established that the property was Wright's homestead in 1983 when he diverted John Deere's monies, the decisions of the courts below were correct as straightforward applications of Texas law. The property was properly the subject of a constructive trust and equitable lien for the funds fraudulently diverted into the property. *Baucum v. Texam Oil Corp.*, 423 S.W.2d 434, 442 (Tex. Civ. App. — El Paso 1967, writ ref'd n.r.e.). *See Kostelnik v. Roberts*, 680 S.W.2d 532, 536 n. 1 (Tex. App. — Corpus Christi 1984, writ ref'd n.r.e.). *See also First State Bank of Ellinger v. Zelesky*, 262 S.W. 190 (Tex. Civ. App. — Galveston 1924, no writ); *Smith v. Green*, 243 S.W. 1006 (Tex. Civ. App. — Amarillo 1922, writ ref'd).

The state-law decisions on which Wright relies are simply inapposite. *See First Interstate Bank v. Bland*, 810 S.W.2d 277 (Tex. App. — Fort Worth 1991, no writ) (deed of trust lien void on property where jury found that property was homestead and that no fraud was committed); *Hoffman v. Love*, 494 S.W.2d 591 (Tex. Civ. App. — Dallas), *writ ref'd n.r.e.*, 499 S.W.2d 295 (Tex. 1973) (jury finding of homestead and no abandonment; amount of property in excess of homestead limitation is subject to lien for the benefit of general creditors); *In re Moody*, 862 F.2d 1194 (5th Cir. 1989), *cert. denied*, U.S. , 112 Sup. Ct. 1562 (1992) (creditors have no right to equitable lien because of attempted fraudulent conveyance of the property by owner).

D. The Decision Below Is Not in Conflict With the Decision of Any Court of Appeals or of the Court.

Wright appears to contend that the decision below is in conflict with *United States v. Rodgers*, 461 U.S. 677 (1983). (Petition at 10) There the Court recognized the existence of Texas homestead law. But on the merits, *Rodgers* held only that a federal tax statute empowers a federal district court to order the forced sale of real property in which a delinquent taxpayer had an interest at the time he incurred his indebtedness, even when the taxpayer's spouse, who did not owe any of that indebtedness, had a separate homestead right in the property under Texas law. The Court's decision in *Rodgers* is irrelevant to Wright's contentions and the decision of the court of appeals in the present case presents no conflict with it.

CONCLUSION

For all of the above reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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February 9, 1994

[Filed, U.S. Court of Appeals, September 3, 1993]

United States Court Of Appeals

FOR THE FIFTH CIRCUIT

No. 93-1144
No. 93-1146
SUMMARY CALENDAR

IN THE MATTER OF: R. DON WRIGHT
AND MICKI WRIGHT,

Debtors.

R. Don Wright

Appellant,

VERSUS

JOHN DEERE INDUSTRIAL EQUIPMENT CO.,

Appellee.

**Appeal from the United States District Court
For the Northern District of Texas
(1:91-CV-058-C; 1:91-CV-059-C)**

Before: JOLLY, WIENER, AND EMILIO M. GARZA, CIRCUIT JUDGES.

PER CURIAM:*

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

R. Don Wright, Debtor-Appellant, appeals the district court's affirmance of the bankruptcy court's imposition of a constructive trust and equitable lien on Wright's domicile in favor of John Deere Industrial Equipment Co., Creditor-Appellee ("John Deere"). The constructive trust and equitable lien were imposed as part of the bankruptcy court's entry of default judgment against Wright for his repeated refusals to follow the bankruptcy court's lawful orders that he allow John Deere and other creditors to inspect personal property located within his domicile. Concluding that under the law of the case doctrine we are bound by an earlier decision of this court upholding the default judgment, we affirm the orders of the district court.

I

FACTS AND PROCEEDINGS

Both of Wright's instant appeals, No. 93-1144 and No. 93-1146, arise out of the district court orders[1] affirming the bankruptcy court's imposition of sanctions that in turn produced the entry of default judgment in favor of creditors John Deere and NCNB Texas National Bank. They and the trustee, Stanley Wright, had moved for sanctions because of Wright's repeated refusal to obey the Bankruptcy Court's inspection orders. After

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[1] Appeal no. 1144 arises from the Order dated January 25, 1993 in adversarial case no. CA-1-91-058-C; Appeal no. 1146 arises from the order dated January 22, 1991 in adversarial case no. CA-1-91-059-C. Neither the Appellant nor the Appellees have distinguished between the two adversarial cases and orders on appeal. In addition, the only thing that the Appellant challenges is the imposition of the equitable lien and constructive trust in favor of John Deere, the imposition of which was contained in both orders of the district court. Thus, for purposes of these appeals, we have consolidated the analysis of the two orders and the constructive trust issue within this one opinion.

conducting a full evidentiary hearing the bankruptcy court entered orders in favor of the trustee and the creditors.

In an earlier appeal Wright challenged the order imposing sanctions in favor of the trustee. In *Wright I*,[2] we reviewed those sanctions and concluded that none were erroneous, including those striking Wright's answer and imposing a default judgment in favor of the creditors. As we stated in *Wright I* :

> Wright invoked the aid of the court in seeking a benefit he desired — a discharge in bankruptcy. As long as the court did his bidding he was inclined to obey. When orders adverse to Wright's position were issued he chose to ignore them without seeking interlocutory appeal or mandamus relief. Wright's conduct constituted open and notorious contempt of the bankruptcy court. We cannot and will not countenance such.[3]

In this appeal Wright challenges the district court's orders affirming the bankruptcy court's imposition of sanctions in favor of John Deere. Specifically, Wright challenges the sanction that imposed an equitable lien and constructive trust as part of the default judgment in favor of John Deere.

II

ANALYSIS

Wright asserts several grounds to challenge the district court's orders affirming the equitable lien and constructive trust in favor of John Deere. We do not address the merits of Wright's

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[2] *In re R. Don Wright*, No. 92-1604 (5th Cir., Dec. 22, 1992) [*Wright I*].

[3] *Wright I*, at 6.

challenges, however, because we are bound by the earlier decision of this court in *Wright I*.[4]

In *Wright I*, while deciding the trustee's appeal, we addressed whether the bankruptcy court abused its discretion in striking Wright's answer and entering default judgment in favor of the creditors, John Deere and NCNB. After a review of the record we concluded that Wright's open and notorious defiance of the bankruptcy court amply justified the imposition of those sanctions.[5] The following colloquy with the bankruptcy court reveals the extent of Wright's contempt:

> Q: So Mr. Wright if the court issues a fourth order, or a fifth order compelling you to allow the creditors entry to your residence, to inspect and appraise the entire contents, you will continue to refuse to obey those orders?
>
> A: I will refuse to let you in the house; yes, sir.

The sanction striking Wright's answer and entering default judgment in favor of John Deere establishes the validity of John Deere's equitable lien and constructive trust. As a result of Wright's answer being stricken, the allegations contained in John Deere's original and amended complaint are taken as true — including the allegation that Wright fraudulently diverted proceeds from John Deere for the improvement of his property. By entering the default judgment the bankruptcy court granted John Deere's prayer for relief — which included the request that

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[4] *E.g., Ingalls Shipbuilding, Inc. v. Director, Office of Workers' Compensation Programs*, 976 F.2d 934, 937 (5th Cir. 1992) (stating that one panel is bound by the decision of a prior panel absent intervening legislation or a superseding decision by the Supreme Court or this court *en banc*).

[5] *Wright I*, at 1, 6.

Wright's property be impressed with an equitable lien and constructive trust for $403,933.34.

Consideration here of Wright's sole colorable basis for challenging the equitable lien and constructive trust — that they cannot be placed on non-fraudulently acquired homestead property as a matter of law — is also pretermitted by the sanctions upheld by a previous panel of this court in *Wright I*. Wright's challenge is predicated on classifying his property as a homestead as of the time he misappropriated the funds. Texas law, however, places the burden of establishing the homestead character of the property on the one claiming the homestead exemption.[6] Because Wright subjected himself to sanctions that prevented him from offering proof on this issue, he cannot now claim that his property was a homestead during the relevant period without requiring us to revisit whether those sanctions were properly imposed. Again, that inquiry is precluded by the law of the case.[7]

III

CONCLUSION

Wright's open defiance of the bankruptcy court led to extensive but justifiable sanctions having far reaching consequences. One of those consequences was the imposition of an equitable lien and

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[6] *E.g. NCNB Texas National Bank v. Carpenter*, 849 S.W.2d 875, 879 (Tex. App. — Fort Worth 1993, no writ); *First Interstate Bank v. Bland*, 810 S.W.2d 277, 286 (Tex. App. — Fort Worth 1991, no writ); *Pace v. McEwen*, 617 S.W.2d 816, 818 (Tex. Civ. App. — Houston [14th Dist.] 1981, no writ).

[7] *See e.g., E.E.O.C. v. Intern. Longshoremen's Ass'n*, 623 F.2d 1054, 1058 (5th Cir. 1980) (stating that the "law of the case" rule precludes review of findings of fact and conclusions of law made by an appellate court in a prior appeal of the case at issue).

constructive trust on his domicile. Because we conclude that our previous decision bars reexamination of the validity of the sanctions on which the district court's orders are based, the orders of the district court are AFFIRMED.[8]

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[8] In affirming the district court, and thus the bankruptcy court, we caution Wright that, like his defiance of those courts, any frivolous or contemptuous actions in this court relative to the subject matter of this and previous decisions could subject him to the full panoply of sanctions at our disposal.

[Filed, U.S. Court of Appeals, October 13, 1993]

United States Court Of Appeals

FOR THE FIFTH CIRCUIT

No. 93-1144
No. 93-1146
SUMMARY CALENDAR

IN THE MATTER OF: R. DON WRIGHT
AND MICKI WRIGHT,

Debtors.

R. Don Wright

Appellant,

VERSUS

JOHN DEERE INDUSTRIAL EQUIPMENT CO.,

Appellee.

**Appeals from the United States District Court
For the Northern District of Texas
(1:91-CV-058-C; 1:91-CV-059-C)**

ON PETITION FOR REHEARING

(OCTOBER 13, 1993)

Before: JOLLY, WIENER, AND EMILIO M. GARZA, CIRCUIT JUDGES

IT IS ORDERED that the petitions for rehearing filed in the above entitled and numbered causes on behalf of Appellant, Wright, be and the same are hereby DENIED.

In its petition for rehearing, Wright argues for the first time that the Appellee, John Deere Industrial Equipment Co., judicially admitted that Wright's property was a homestead during the period in which the funds at issue were diverted to that property. Deere counters that it merely used the term "homestead" in the present tense, namely, to describe the current status of the property.

We decline to consider these issues, as we adhere to the well-settled practice that a court of appeals will not consider claims raised for the first time in a petition for rehearing.[1]

ENTERED FOR THE COURT

/s/ Jacques L. Wiener, Jr.
United States Circuit Judge

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[1] *E.g., Browing v. Navarro,* 894 F.2d 99, 100 (5th Cir. 1990); *Dean v. Dean,* 837 F.2d 1267, 1268 (5th Cir. 1988); *Wells v. Rushing,* 760 F.2d 660, 661 (5th Cir. 1985).

[Filed in U.S. District Court, January 22, 1993]

IN THE

United States District Court

FOR THE NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

IN RE R. D. WRIGHT, A/K/A DON WRIGHT, A/K/A R. DON WRIGHT, *Debtor.*	CASE NO. 188-10048-7

* * *

R. D. WRIGHT, A/K/A DON WRIGHT, A/K/A R. DON WRIGHT, *Appellant,* V. JOHN DEERE INDUSTRIAL EQUIPMENT COMPANY, NCNB TEXAS NATIONAL BANK, AND STANLEY WRIGHT, TRUSTEE, *Appellees.*	CA-1-91-059-C

APPEAL FROM THE
UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
JOHN C. AKARD, BANKRUPTCY JUDGE, PRESIDING

* * *

ORDER

This case is before the court for consideration of another appeal of the debtor, R.D. Wright, from orders of the bankruptcy court imposing various sanctions upon him, including the denial of his discharge, the award of monetary sanctions in favor of certain creditors, and the imposition of a nondischargeable, equitable lien and constructive trust on his homestead in favor of John Deere.

Appellant contends that the orders of the court were unlawful, violated certain of his constitutional rights, and are not supported by evidence in the record. The orders of the bankruptcy court have been affirmed by this court and by the United States Court of Appeals for the Fifth Circuit. *Wright v. Wright (In the matter of R. Don Wright)*, No. 92-1604, (5th Cir., Dec. 22, 1992). The additional argument presented by R. Don Wright in this appeal, that the record does not support the imposition of the equitable lien and constructive trust on his homestead, has no merit.

It is, accordingly, ordered that the decision of the bankruptcy court is, in all things, **AFFIRMED.**

The clerk shall furnish a copy of this order to each attorney of record.

DATED this 22nd day of January 1993.

/s/ SAM R. CUMMINGS
SAM R. CUMMINGS
United States District Judge

[Filed in U.S. District Court, January 25, 1993]

IN THE

United States District Court

FOR THE NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

IN RE R. D. WRIGHT, A/K/A DON WRIGHT, A/K/A R. DON WRIGHT, *Debtor.*	CASE NO. 188-10048-7

* * *

R. D. WRIGHT, A/K/A DON WRIGHT, A/K/A R. DON WRIGHT, *Appellant,* V. JOHN DEERE INDUSTRIAL EQUIPMENT COMPANY, *Appellee.*	CA-1-91-058-C

APPEAL FROM THE
UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
JOHN C. AKARD, BANKRUPTCY JUDGE, PRESIDING

* * *

ORDER

This case is before the court for consideration of another appeal of the debtor, R.D. Wright, from orders of the bankruptcy court imposing various sanctions upon him, including the denial of his discharge, the award of monetary sanctions in favor of certain creditors, and the imposition of a nondischargeable, equitable lien and constructive trust on his homestead in favor of John Deere.

Appellant contends that the orders of the court were unlawful, violated certain of his constitutional rights, and are not supported by evidence in the record. The orders of the bankruptcy court have been affirmed by this court and by the United States Court of Appeals for the Fifth Circuit. *Wright v. Wright (In the matter of R. Don Wright)*, No. 92-1604, (5th Cir., Dec. 22, 1992). The additional argument presented by R. Don Wright in this appeal, that the record does not support the imposition of the equitable lien and constructive trust on his homestead, has no merit.

It is, accordingly, ordered that the decision of the bankruptcy court is, in all things, **AFFIRMED.**

The clerk shall furnish a copy of this order to each attorney of record.

Dated January 22, 1993.

/s/ SAM R. CUMMINGS
SAM R. CUMMINGS
United States District Judge

IN THE

United States Bankruptcy Court

FOR THE NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

IN RE JOHN DEERE INDUSTRIAL EQUIPMENT COMPANY VS. R.D. WRIGHT AND MICKI WRIGHT	Bankruptcy Cause No. 188-1035
IN RE FIRST REPUBLICBANK OF ABILENE, N.A. VS. R.D. WRIGHT	BANKRUPTCY CAUSE No. 188-1036

PROCEEDINGS

JUDGMENT OF THE COURT

THE COURT: The next is two adversary proceedings, No. 188-1035, John Deere Industrial Equipment Company versus R.D. Wright and Micki Wright, and 188-1036, First RepublicBank of Abilene, which the record, of course, will be billed as NCNB National Bank versus R.D. Wright.

There does not seem to be much dispute about the facts in this matter. The Court adopts the stipulations in the pre-trial order, and the recitation of facts made by Mr. Weinlein at the opening of the hearing.

Additional findings of fact will be made as the Court discusses its decision. The Court first notes that Mr. Wright voluntarily filed this bankruptcy proceeding — not the adversary, of course, but the base underlying bankruptcy proceeding.

He came to this Court asking for relief from his creditors, and for the benefits the Bankruptcy Code makes available to him. With those benefits come duties and responsibilities. You cannot have the benefits without fulfilling the duties and responsibilities. One of the very first duties is to fully and completely fill out the statement of financial affairs and schedules.

One of the questions asked for the location of books and records of the Debtor. Mr. Wright did not disclose that a substantial portion of his books and records were in the possession of Abilene Aero. Clearly, Mr. Wright knew the records were there. He had put some of the records in the hangar himself.

It thus appears, from the very start of this case, he set about to conceal his financial records from the creditors and the Trustee. Mr. Wright has a duty to make a full disclosure to the creditors and the Trustee, and to cooperate with the Trustee. Contrary to this duty, he has fought the Trustee and the creditors at every turn.

He asserts that practically all of the property in his possession belongs to someone else. It is incumbent upon him to furnish proof of those claims. But, of course, he has not done so.

These assertions of ownership are, to say the very least, suspect. Mr. Wright controls several corporations. He says that Cami Corporation owns lots of his household furniture and a condominium in New Mexico, which he enjoys.

This Court has heard of no business done by that corporation. Clearly, the Trustee and the creditors are entitled to freely investigate all of the corporations which Mr. Wright controls, or in which he has an interest. They are entitled to determine if, in

fact, these corporations are his alter ego. Mr. Wright seeks to prevent an examination of his house, asserting the assets therein are owned by those corporations, his wife or their children.

The Trustee and the creditors cannot test the validity of these claims without a physical inspection, photographing, and appraisal of the items in question. Mr. Wright's offer to put the items claimed as exempt on the lawn for inspection, while concealing the other items in the house, borders on being ridiculous. It is nothing more than a ploy to try to further frustrate the Trustee and the creditors.

The property of the bankruptcy estate is defined in section 541, more specifically section 541a. And it tells us that a bankruptcy estate is comprised of all of the following property, wherever located, and by whomever held.

Subdivision one, after some exceptions that are not applicable here, then states that the property of the estate includes all legal or equitable interest of the Debtor in property as of the commencement of this case. Now, that seems rather broad.

Secondly, all interests of the Debtor, and the Debtor's spouse in community property as of the commencement of the case; that is, under the sole, equal or joint management and control of the Debtor are liable for an allowable claim against the Debtor.

Clearly, the items in the house are under his management and control. And the creditors and the Trustee are entitled to inspect, photograph, and appraise — not only the items, but the house, itself, all of its contents, and to examine all papers and other properties in the vault in the house.

The mere presence of the vault leads the Court to believe that valuable assets are being concealed. At one time, the house was valued at $600,000.00. So, the furnishings could be expected to be very expensive. In deed, the furniture described in the testimony costs a great deal.

The Debtor is entitled only to $30,000.00 of personal property exemptions, assuming he is entitled to exemptions for a family. And that, therefore, could be used up very rapidly by the furniture.

Mr. Wright asked for bankruptcy relief. He must, then, allow the inspection. This Court feels that by asking for bankruptcy relief, Mr. Wright consented to the inspection, thereby eliminating any Fourth Amendment to the United States Constitution problems.

Even if Mr. Wright in entitled to Fourth Amendment protections, the inspections were ordered by the Court, after due notice, and those orders were not appealed. Thus, any Fourth Amendment requirements were fully met. And the Court does not concede that there are such requirements.

Several times, both orally and in writing, this Court ordered Mr. Wright to permit inspection of his home. Each time, he refused. He says that he will refuse to obey any further orders of this Court to that effect.

This Court issued two such specific orders on that subject that I want to refer to. The first is the order of June 13, 1989 in the main case. It was entered on July 24, 1989, and it was based on an objection by NCNB Texas National Bank to the Debtor's claim of exempt property.

And the ordering portion reads as follows: "Ordered that the Debtor allow NCNB access to his residence upon five day's written notice to inspect, inventory, and appraise all property owned by the Debtor, or in the Debtor's possession, or over which the Debtor exercises use and control."

Parenthetically here, you will notice how that parallels the definition of property of the estate that we read a minute ago.

Another portion of the order reads: "Ordered that the failure of the Debtor to provide NCNB with access to his residence for such inspections and appraisal and shall result in a denial in all inspections claimed by the Debtor and/or such other sanctions as the Court shall deem proper."

There are other provisions, but those are the ones that I wanted to mention.

And order in, basically, the same language was dated July 28th, 1989 and entered on August 8th, 1989 with respect to John Deere Industrial Equipment Company's objection to the Debtor's claim of exempt property. And that order also mentioned denial of exemptions or other sanctions determined by the Court.

Mr. Wright totally ignored both of these orders. The orders mentioned denial of exemptions or other appropriate sanctions. Under Section 727a 6 of the Bankruptcy Code, the Debtor can be denied a discharge for refusal to obey a lawful order of the Court. Mr. Wright is clearly on notice of this statutory provision. And when he failed to abide by the orders of this Court, he knew that he was inviting denial of discharge.

Here, Mr. Wright refused to obey several lawful orders of the Court. And I point out that these orders were not appealed from.

The Court gave Mr. Wright every benefit of the doubt and several opportunities to comply with this Court's orders. Not only did he fail, and willfully refuse each time to obey the orders of this Court, he blatantly testifies that he would not comply if the Court, again, ordered him to do so.

Considering all of these factors, the Court feels that denial of the discharge is appropriate. And it is, therefore, the order of the Court that Mr. Wright's discharge be denied for failure to abide by lawful orders of this Court.

The Court will now consider the requested sanctions for failure to provide discovery. What has already been said about inspection applies equally as well here. The creditors and the Trustee need to physically inspect and examine all of Mr. Wright's assets, and all assets under his control; and all assets of his spouse, to recover as much of their claims as possible. I guess that the assets of the spouse is limited to the community property, as was defined in Section 541 that I read a moment ago.

The Trustee and the creditors are also entitled to examine Mr. Wright's books and records and his financial transactions to look for secreted assets, sham transactions, fraudulent transfers and the like.

Mr. Wright is obligated to make a full disclosure and to make the books and records and papers available to the Trustee, and to the creditors.

By an order dated February 5, 1988, and entered on February 10, 1988 in the main case, we find this ordering paragraph: "It is further ordered and adjudged that the Debtor will appear within the next 30 days at a time and place selected by Mr. Thomas."

And parenthetically here, Mr. Thomas, at that time, was representing John Deere.

Back to quotation: "For the purpose of being deposed by Mr. Thomas, and for the further purpose of being examined by Mr. Thomas pursuant to Rule 2004 of the United States Bankruptcy Rules. Mr. Wright's objections to the production of documents is denied. Mr. Wright is ordered to produce the documents requested. However, he is not required to incur any undue expense in gathering the documents, and may, instead, offer his accountant, or other custodians of said documents for depositions, if the expense and time required to gather the documents would impose an undue burden," end of quotation.

Mr. Wright had alleged that it would cost a great deal of money to compile the documents requested by the discovery request. So, the Court allowed him to produce the documents, or the custodian of those documents. In effect, relieving him of an obligation to compile them.

The documents which he produced at his February, 1988 deposition, given pursuant to this order are described in John Deere's portion of the pre-trial order. And that summary is not contested by Mr. Wright.

Clearly, the documents furnished did not comply with the discovery request. The Court felt — and still feels — that the discovery request was reasonable and necessary under the circumstances of this case.

Had it not been for the motion to lift the automatic stay filed by Abilene Aero in October of 1988 — you will note several months later — after the deposition. Had it not been for that, we would not have realized how far Mr. Wright had gone in hiding records.

He knew the records were there. He had taken some there, himself. His wife removed items that she had stored there. Yet, Mr. Wright did not mention these items in his schedules; did not bring them to his deposition; did not mention them, any of them, in his deposition, nor did he produce an officer of Abilene Aero as a custodian of those records.

However, even with the fortuitous discovery of these documents, the Trustee and the creditors do not have all of the necessary documents. Mr. Randy Burchell described documents that he gave to Mr. Wright in November or December of 1987. But Mr. Wright did not produce those documents at his deposition in February of 1988. And there is no evidence that he has ever produced those documents.

In his testimony at this hearing, Mr. Wright admitted having documents which he should have turned over in his February,

1988 deposition, but he did not do so. He professed to feel that the documents were not covered by the Notice and this Court's order. But the Court feels that he knew quite well the relevancy of those documents, and deliberately attempted to hide them.

Mr. Wright's attitude seems to be that he will do what he wishes, and ignore this Court's orders when he wishes. The Court can only conclude that he continues to hide relevant information and documents. Such action must not and cannot be tolerated by this Court.

Rule 37b 2 of the Federal Rules of Civil Procedure, which is made applicable to bankruptcy, by Bankruptcy Rule 7037 provides in pertinent parts, "If a party fails to obey an order to provide or permit discovery, the Court in which such action is pending may make such orders in regard to such failure as are just. And among other things, the following: Capital C says, "an order striking out pleadings or rendering a judgment by default against the disobedient party."

This is the sanction for which John Deere and NCNB have asked. This is a harsh sanction and should be granted only after careful consideration, and only in the most egregious cases.

The Trustee, of course, is asking for similar relief.

The Court should also consider whether a lesser sanction would secure proper behavior.

The ground rules for this sanction were laid down by the United States Supreme Court in 1909 in a case called Hammond Packing Company versus Arkansas, 212 US 322.

The Rules remain the same under the Federal Rules of Civil Procedure 37b 2c.

In Hammond Packing, the Supreme Court sustained the striking of the defendant's answer, an entry of a default judgment

for failure to secure attendance of witnesses, and failure to produce documents.

The Court said: "The preservation of due process was secured by the presumption that the refusal to produce evidence material to the administration of due process was but an admission of the want of merit in the asserted defense." End quote. And that is from page 351.

In this case, Mr. Wright has repeatedly failed to allow inspection of his residence, and states that he will not allow inspection, even if the Court once again orders it.

Mr. Wright has concealed, and continues to conceal documents relevant and necessary for this case.

Mr. Wright has not made a bona fide effort to comply with orders of this Court. Instead, he has looked at every turn for ways to avoid compliance with the orders of this Court, and has flagrantly stated that he would not comply with this Court's orders for inspection.

Mr. Wright has not offered any plausible excuse for his noncompliance. He simply says he will not comply.

Clearly, Mr. Wright is able to comply; he just refuses to do so.

Mr. Wright has had ample time, and several opportunities to comply with this Court's orders concerning inspection and production of documents; but, he refuses to do so. His actions in this matter are not the result of oversight, inability, or neglect. His actions are willful and done for spite.

His blatant refusals to allow inspections, and the frivolous lawsuits which he caused the corporations to file against NCNB and John Deere and their agents are but two examples of the malicious nature of his actions.

Threats or lectures from this Court will not secure his compliance. They have been tried already, and they have been ignored by Mr. Wright.

Mr. Wright has attempted to hide his assets. John Deere already has a large, uncollected judgment against him. Thus, monetary sanctions, will do no good.

The Court concludes that Mr. Wright's actions clearly demonstrate a lack of merit in his asserted defenses.

Through the bankruptcy process, and his evasive and combative tactics, Mr. Wright has held his creditors off for several years. He chose this course of action; he carried out this course of action. It is now time for the bitter harvest of the seed which he has sown.

This Court is convinced that no threats or sanctions that this Court might impose will result in Mr. Wright's voluntary compliance. Therefore, with respect to John Deere, Mr. Wright's answer is stricken and a judgment shall be entered against Mr. Wright for all relief prayed for by John Deere, including the monetary amounts mentioned in the pre-trial order.

Mr. Weinlein is to prepare an appropriate judgment.

With respect to NCNB, Mr. Wright's answer is stricken, and a judgment shall be entered against Mr. Wright for all relief prayed for by NCNB, including the monetary amounts described in the testimony.

Parenthetically, the monetary amounts would not be dischargeable in a bankruptcy proceeding.

Mr. Moore is to prepare an appropriate judgment.

With respect to the Trustee, Mr. Wright's answer is stricken and a judgment shall be entered denying Mr. Wright's discharge. And the Trustee shall have judgment against Mr. Wright for all

relief prayed for by the Trustee, except for the denial of personal property exemptions. The Trustee shall have judgment for the sums described in the testimony.

Mr. Boone is to prepare an appropriate judgment.

Again, all of the amounts in the testimony and in John Deere's pre-trial order would be non-dischargeable as sanctions.

Some comment about these orders, is perhaps, necessary. I do not intend to deny Mr. Wright his personal property exemptions. And none of the orders shall deny his personal property exemptions.

Each judgment shall be submitted to Mr. McIlhany for approval as to form. If the parties cannot agree on the form of the judgment within 15 days from the first mailing to Mr. McIlhany, or the first delivery, if it is delivered to his office, then, both parties shall submit proposed judgments to the Court.

More than one complaint may have asked for a denial of the discharge. If so, it would be appropriate to include the denial of the discharge in each judgment where it was asked for. Thus, if one of these judgments is reversed on appeal, denial will be in the other.

There is no need for written findings of fact or conclusions of law. The Court has put those on the record.

Are there any questions, Gentlemen?

Very well, thank you, very much, we will be in recess.

(END OF HEARING)

THE STATE OF TEXAS }
COUNTY OF TAYLOR }

I, H. Don Rodgers, a Certified Shorthand Reporter for the firm of Rodgers & Rodgers, Court Reporters, 202 Pine Street, Abilene, Texas, do hereby certify that I am the reporter who was present and reported the foregoing judgment of the Court.

And I do hereby certify that the above and foregoing 18 pages contain a full, true, and correct transcript of all proceedings had.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 2nd day of July, 1990.

/s/ H. DON RODGERS
H. DON RODGERS
CERTIFIED SHORTHAND REPORTER
IN AND FOR THE STATE OF TEXAS
Certificate No. 1096, and
Notary Public in Taylor County
For the State of Texas
My Commission Expires: 12-22-92

[Filed, U.S. District Court, June 18, 1992]

IN THE

United States District Court

FOR THE NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

IN RE R. D. WRIGHT, A/K/A DON WRIGHT, A/K/A R. DON WRIGHT, *Debtor.*	CASE NO. 188-10048-7

* * *

R. D. WRIGHT, A/K/A DON WRIGHT, A/K/A R. DON WRIGHT, *Appellant,* V. STANLEY W. WRIGHT, TRUSTEE, *Appellee.*	CIVIL ACTION NO. CA-1-91-061-C (CONSOLIDATED WITH CA-1-91-062-C)

APPEAL FROM THE
UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
JOHN C. AKARD, BANKRUPTCY JUDGE, PRESIDING

* * *

ORDER

This case is before the court for consideration of the appeal of the debtor, R. D. Wright, from orders of the bankruptcy court imposing various sanctions upon him, including the denial of his discharge.

Appellant contends that the orders of the court were unlawful and violated certain of his constitutional rights and that the record does not support the denial of his discharge. This court must review the bankruptcy court's conclusions of law *de novo*. *Sutton v. Bank One, Texas, N.A.*, 904 F.2d 327, 329 (5th Cir. 1990). The findings of fact of the bankruptcy court may not be set aside unless they are clearly erroneous. The court has considered carefully the written arguments of counsel and the record in this case and is of the opinion that the decision of the bankruptcy court should be affirmed. The findings of fact are not clearly erroneous. There is no reversible error in the conclusions of law.

It is, accordingly, ordered that the decision of the bankruptcy court is, in all things, **AFFIRMED.**

The clerk shall furnish a copy of this order to each attorney of record.

Dated June 18, 1992.

/s/ SAM R. CUMMINGS
SAM R. CUMMINGS
United States District Judge

[Filed, U.S. Court of Appeals, December 22, 1992]

United States Court Of Appeals

FOR THE FIFTH CIRCUIT

No. 92-1604
SUMMARY CALENDAR

IN THE MATTER OF: R. DON WRIGHT,

Debtor.

R. Don Wright

Appellant,

VERSUS

STANLEY WRIGHT, TRUSTEE,

Appellee.

Appeal from the United States District Court
For the Northern District of Texas
(1:91-CV-061-C (con. w/1:91-CV-062-C))

Before: POLITZ, CHIEF JUDGE, JOLLY AND EMILIO M. GARZA, CIRCUIT JUDGES.

POLITZ, CHIEF JUDGE:*

Don Wright, debtor in bankruptcy, appeals the imposition of sanctions resulting in the entry of default judgment in favor of his creditors. Finding no error, we affirm.

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Background

On August 24, 1987, Wright filed a pro se petition under Chapter 11 of the Bankruptcy Code which later converted to Chapter 7. On June 21, 1988, NCNB and John Deere, both creditors of Wright, filed adversary proceedings objecting to the discharge of their debts and seeking declaratory relief. Seven days later NCNB moved to inspect and appraise property Wright claimed as exempt. Shortly thereafter the bankruptcy court entered an order allowing both NCNB and John Deere access to the disputed property. The order required the creditors to provide five-days notice of the inspection. Wright then unsuccessfully moved to have his exemptions deemed granted.

Wright moved the court for protection when the creditors notified him of the date of inspection. The court considered and rejected this request. When representatives of NCNB and John Deere arrived at Wright's home and announced their intentions to enter, no one answered the door. The creditors withdrew and informed the court. Thereafter, joined by the trustee, they notified Wright of an inspection to occur five days later. Wright responded by notifying all concerned that no access would be allowed, regardless of the court order.

John Deere moved for sanctions, citing Wright's contempt of the court's order, refusal to comply with discovery orders, and taking depositions without providing notice. NCNB and the trustee joined this motion. The bankruptcy court again ordered Wright to allow his creditors access to his home and to allow them to conduct a proper inspection and inventory. Wright filed a motion asking the court to reconsider. That motion was denied. Thereafter, after being notified of yet a third date of inspection, Wright again refused to comply with the court's order.

On three occasions Wright argued to the bankruptcy court that his creditors should not be allowed access to his home. The court thrice rejected the argument and Wright thrice ignored the

court's order. A third motion for sanctions was made. The bankruptcy court conducted a full evidentiary hearing and then struck Wright's answer, entered default judgment in favor of John Deere and NCNB, denied Wright a discharge as the trustee had requested, and imposed monetary sanctions. The court noted from the bench that "It . . . appears that from the very start of this case, he set about to conceal his financial records . . . ." The court then denied Wright's motion for reconsideration.

On appeal, the district court affirmed the order; Wright timely appealed.

Analysis

The bankruptcy court's authority to sanction Wright flows from Bankruptcy Rule 7037 which adopts Fed.RCiv.P. 37. Rule 37 provides: "[T]he court . . . may invoke such orders in regard to the failure [to comply] as are just, and among others the following: 'An order striking out pleadings . . . or dismissing the action . . . or rendering a judgment by default against the disobedient party.'" Fed.R.Civ.P. 37(b)(2) & (2)(C). Wright proceeded through the bankruptcy proceedings displaying open contempt for the process and the bankruptcy court's authority. The following colloquy is telling:

> Q: So Mr. Wright if the court issues a fourth order, or a fifth order compelling you to allow the creditors entry to your residence, to inspect and appraise the entire contents, you will continue to refuse to obey those orders?
>
> A: I will refuse to let you in the house; yes, sir.

Wright claimed that virtually all the property used and enjoyed by him belonged to someone else and he refused to allow the trustee or his creditors access to the property to evaluate or determine the true ownership of the assets he held. The court

found these claims of second-party ownership to be suspect. Wright claims, for example, "that Cami Corporation owns lots of his household furniture and a condominium in New Mexico, which he enjoys." The bankruptcy court was aware of no business by that corporation.

Wright offered to place some disputed items out on his lawn for the creditors and the trustee to photograph. The court rejected this suggestion as ridiculous and concluded that Wright sought to conceal valuable property inside his home because Wright was afraid that expensive furnishings would quickly use up his $30,000 personal property exemptions. Given the necessity of the valuation and the lack of an iota of cooperation from Wright, the order allowing access to the property was reasonable; Wright's present arguments, which imply the contrary, are rejected.

Wright made it impossible for the trustee to carry out his responsibilities or for his creditors to protect their legitimate interests. More importantly, Wright placed himself above the law. Such conduct was not tolerated. Nor should it be.

Wright claims that the sanctions were improper because the creditors did not specify particular property in their objections to his claimed exemptions. This seems to beg the question, until the creditors have an opportunity to conduct discovery of the value of the personal property held by Wright, they can hardly make specific objections. If the creditors could not make specific objections, it is due not to their slovenliness but to Wright's conduct after the court determined that an inspection was reasonable and necessary. It is not the debtor's place to pick and choose among the orders of the bankruptcy court he will honor.

Self help is not an alternative to appeal.[1] This is true even when the order appears to run afoul of constitutional guarantees.[2]

Wright invoked the aid of the court in seeking a benefit he desired — a discharge of his debts in bankruptcy. As long as the court did his bidding he was inclined to obey. When orders adverse to Wright's position were issued he chose to ignore them without seeking interlocutory appeal[3] or mandamus relief. Wright's conduct constituted open and notorious contempt of the bankruptcy court. We cannot and will not countenance such.

AFFIRMED.

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[1] Maness v. Meyers, 419 U.S. 449 (1975) ("Persons who make private determinations of the law and refuse to obey an order generally risk criminal contempt even if the order is ultimately ruled incorrect.") (citations omitted).

[2] United States v. Dickinson, 465 F.2d 496, 509 (5th Cir. 1972), cert. denied, 414 U.S. 979 (1973).

[3] See 28 U.S.C. § 1334 (allowing interlocutory appeal to the district court upon leave of that court).